

February 10, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9800605**

DAN & JULIE VISE
Code Enforcement Appeal

Location: 34909 164th Avenue Southeast

Appellants: Dan and Julie Vise
represented by **Gregory Amann**, Attorney
McGavick Graves, P.S.
P.O. Box 1317
Tacoma, Washington 98401-1317
Telephone: (253) 627-1181
Facsimile: (253) 627-2247

King County: Department of Development and Environmental Services,
represented by **Jim Toole**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7196
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	February 9, 2006
Hearing Closed:	February 9, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On May 4, 2005 the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Dan and Julie Vise at 34909 – 164th Avenue Southeast, Auburn, citing their property for the conversion of a barn into an accessory dwelling unit without required permits. The Vises submitted a timely appeal of the notice and order alleging that the unlawful conversion was the work of a prior owner and stating that they had bought the property without notice of the code enforcement case. Their appeal statement also points out internal inconsistencies within the notice and order deadlines and requests an extension of the compliance period.
2. Although the notice and order was issued in December 2005, the code enforcement file on this property dates back to June 1998 and includes, in addition to the barn conversion, allegations concerning lack of permits for the primary mobile home residence, illegal operation of an auto body repair business and an unlawful accumulation of abandoned vehicles. It appears that the file was transferred back and forth between code enforcement officers until the summer of 2004, when Officer Jim Toole was assigned the case and moved it forward.
3. The particular circumstances of conversion of an old barn to an accessory dwelling unit on this property are rather unique in that only approximately the middle third of the barn has been renovated, while both extremities of the long narrow structure largely remain dilapidated except for some roof covering improvements and entry doors at one end. Nor does the accessory dwelling itself appear to have been completely finished, with sections of exposed wiring, wafer board, unpainted wallboard and untiled bathroom areas.
4. The Vises bought the property in December 2003 and are unhappy that they found themselves in the grip of an on-going code enforcement proceeding of which they had no prior notice either from their seller or their title insurance report. In view, however, of the bizarre and slapdash character of the converted barn structure, it is not credible to suggest that they actually believed the converted building had received prior building permit approval. At most they may have thought that due to the fact that the conversion occurred some six or seven years earlier, its delinquent construction had successfully evaded detection.
5. The Appellants testified that their further investigations disclosed that the cost of making the converted barn structure code-compliant would be some \$40,000 to \$50,000. They would like to have more time to consider their decision whether to upgrade the building to code requirements or to demolish it. This decision appears to depend to some degree on the outcome of their efforts to pursue legal remedies against their seller. Staff has agreed to extend the compliance deadline until the end of August 2007, provided that in the meantime the illegal accessory dwelling unit is appropriately secured against further domestic use or unauthorized entry.

CONCLUSIONS:

1. The evidence of record demonstrates that the old barn on the Appellants' property was partially converted into an accessory dwelling unit without required building permits. This unauthorized work appears to have been done prior to purchase by the individual who sold the property to the Vises. Nonetheless, KCC 23.02.010 H provides that the owners of property upon which a code violation exists are persons responsible for code compliance. Accordingly, the notice and order must be upheld and the appeal denied.

DECISION:

The code enforcement appeal of Dan and Julie Vise is DENIED.

ORDER:

1. Within 30 days of the date of this order the utility hookups to the accessory dwelling unit within the barn shall be disconnected and the dwelling unit shall be decommissioned and secured against unauthorized entry in a manner approved by the DDES code enforcement officer assigned to the case. Appellants shall also consent to and cooperate with periodic DDES inspections of the barn conducted upon reasonable prior notice.
2. No later than August 31, 2007 either a complete application for any building permits required to legalize the barn and accessory dwelling unit shall be submitted to DDES or the structure shall be demolished.
3. No penalties shall be assessed against the Appellants or their property if both the conditions stated above are met. If either condition is not met, DDES may assess penalties against the Appellants and their property retroactive to the date of this order.

ORDERED this 10th day of February, 2006.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED via certified mail this 10th day of February, 2006, to the following parties:

Gregory Amann, Attorney
McGavick Graves, P.S.
P.O. Box 1317
Tacoma, WA 98401

Dan & Julie Vise
34909 – 164th Ave. SE
Auburn, WA 98092

TRANSMITTED this 10th day of February, 2006, to the following parties and interested persons of record:

Gregory Amann
McGavick Graves PS
P.O. Box 1317
Tacoma WA 98401-1317

Loren Combs
McGavick Graves PS
PO Box 1317
Tacoma WA 98401-1317

Dan & Julie Vise
34909 - 164th Ave. SE
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Jeri Breazeal
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MS OAK-DE-0100

DDES, Code Enf. Billing
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Elizabeth Deraitus
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Lamar Reed
DDES/LUSD
MS OAK-DE-0100

Jim Toole
DDES, Code Enf.
MS OAK-DE-0100

Toya Williams
BSD/INT
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE FEBRUARY 9, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9800605.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing was Jim Toole, representing the Department; Gregory Amann representing the Appellant, and Dan and Julie Vise.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | Staff report to the Hearing Examiner |
| Exhibit No. 2 | Copy of notice and order issued May 4, 2005 |
| Exhibit No. 3 | Copy of appeal received May 23, 2005 |
| Exhibit No. 4 | Copies of codes cited in the notice and order |
| Exhibit No. 5 | Copy of real estate excise tax affidavit |
| Exhibit No. 6 | Copy of 2002 aerial photograph of subject property |
| Exhibit No. 7 | Photographs of subject property taken on June 28, 2005 |
| Exhibit No. 8 | Copies of correspondence noting violations on the property obtained from Jim Toole |

SLS :gao
E9800605 RPT